IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO. 371 OF 2004

Joaquim Anthony Fernandes,
deceased, through his legal heirs :

(1)Mrs. Piedade Conceicao Fernandes,

(2)Master Felix Fernandes, minor, through
his mother and natural guardian
Mrs. Piedade Conceicao Fernandes.

Both residents of Sonarvaddo, Verla,
Parra, Bardez, Goa, represented in
this Act by their duly constituted
Attorney Miss Maria Cleta Fernandes. ..... Petitioner.

V/s.

1. Administrative Tribunal of Goa,
Dr. Dadad Vaidya Road, Panaji, Goa.

2. Collector of North Goa District at
Panaji.

3. Mamlatdar of Bardez, with Office
at Mapusa, Goa.

4. Mr. Alexander Rodrigues, deceased
through his legal heirs :

(1) Sebastiana Cardoz e Rodrigues,
(2) Agnelo Rodrigues through his L.Rs.

(2)(a) Roque Rodrigues,
(b) Thelma Rodrigues,
(c) Melvin Rodrigues,

(3)Maria Agnelo Rodrigues,

(4)Hilary Rodrigues,

(5)Jean Hilary Rodrigues,

(6)Domnic Rodrigues,

(7)Joanita Rodrigues,

(8)Perpetua Rodrigues.

All residents of Sonar Vaddo,
Verla, Parra, Bardez, Goa. ..... Respondents.

Mr. J.E. Coelho Pereiera, Sr. Advocate with Ms. Bindiya Bhise, Advocate for the petitioner.

Mr. S.R. Rivonkar, Government Advocate for respondents No.2 and 3.

Mr. E.P. Lobo, Advocate for respondents No.4(1), 4(2), (a), (b), (c) and 3 to 8.

CORAM : B.H. MARLAPALLE, J.

DATE : OCTOBER 08, 2004.

ORAL ORDER :

Heard Mr. Pereira, the learned Senior Counsel with Ms. Bindiya Bhise, for the petitioners, Mr. S.R. Rivonkar, the learned Government Advocate for respondents No.2 and 3 and Mr. E.P. Lobo, the learned Advocate for respondents No.4(1), 4(2), (a), (b), (c)and 3 to 8.

2. This petitioner under Article 227 of the Constitution, takes exception to the order passed by the Administrative Tribunal, Goa in Mundkar Revision Application No. 8/2000, whereby the revision was partly allowed by setting aside the impugned Judgment and Order dated 6.5.1983, passed by the Addl. Collector, North Goa, Panaji allowing the

Judgment and Order dated 29.8.1986 of the Mamlatdar of Bardez and the matter was remanded to the Mamlatdar with direction to hear both the sides, afresh and in the light of the observations made in the said decision, based on the definition of mundkar under the 1971 Act.

3. Mr. Pereira, the learned Senior Counsel, at the outset, submitted that the direction to decide the matter based on the definition under the 1971 Act is *per se* erroneous and the status was required to be decided as per the 1975 Act.

4. The Tribunal has agreed with the Authorities below i.e. the Mamlatdar and the Addl. Collector regarding the issue of fixed habitation, but noted a different opinion recorded by both of them on the second issue.

5. In the case of ***Shri Joseph Almeida & anr. vs. Shri Krishnanath Narayan Prabhu and ors, (***1990 (1) Goa L.T. 251), a Division Bench of this Court was dealing with a case regarding the status of a mundkar in the application filed on 23.2.1972 before the Mamlatdar under Section 10 of the Goa, Daman and Diu (Protection from Eviction of Mundcar, Agricultural Labourers and Village Artisans), Act, 1971 and while the said application was pending, the new Act namely, the Goa, Daman and Diu Mundkars (Protection from Eviction) Act, 1975 promulgated and came into force with effect from 12.3.1976, the

Mamlatdar relying upon the provisions of the new Act had declared the applicant as the mundkar by the decision dated 16.2.1978 and against the said decision, the landlord appealed to the Collector under the new Act and failed by order dated 13.8.1978. The revision also had failed and a writ petition before this Court met with the same fate. In the letters patent appeal, this Court examined the provisions of Section 41(c) of the new Act, Sections 6 and 24 of the General Clauses Act, 1897 and held that the rights and liberties of the parties in the proceedings pending before the Mamlatdar were governed by the provisions of the old Act, since the new Act had come into force only on 12.3.1976. This view was followed by the Single Bench of this Court in the case of ***Smt. Vials Shashi Bondre and ors. vs. Smt. Narmadem Datta Borkar and others.*** (1995(3) Bom. C.R. 590) .

6. It was contended by Mr. Pereira that while remanding, the Tribunal ought to have held that the second issue was required to be considered under the Act of 1975 and not the repealed Act of 1971. The Tribunal also took into consideration the decision of this Court in the case of **Shri Joseph Almeida and anr. vs. Shri Krishnanath Narayan Prabhu & others, (supra)**, wherein this Court held " The rights and liabilities of parties in proceeding pending under the Mundcar Act of 1971 are governed by the provisions of the same Act of 1971, and provisions of the Act of 1975 are not applicable to such cases." The definition of "mundkar" under Section 2(e) of 1971 Act, reads thus :

> “The Mundcar or dweller is an individual who resides with fixed dwelling in the rustic property of others specially for the purpose of agriculture or watch and ward duties be the dwelling, constructed on own account or on account of the Bhatcar or Landlord receiving or not from the latter any assistance in cash or kind for its construction and establishment.“

7. Having regard to the settled position of law in the cases cited hereinabove, the view taken by the Tribunal in the impugned order does not call for interference in a petition under Article 227 of the Constitution and the status as a mundcar would have to be gone into as defined under the 1971 Act. This petition, therefore, fails and the same is, hereby, rejected summarily.

B.H. MARLAPALLE, J.

ssm.